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COMMITTEE ON THE RIGHTS OF THE CHILD

Twelfth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Concluding observations of the Committee on the Rights of the Child: Guatemala

1. The Committee considered the initial report of Guatemala (CRC/C/3/Add.33) at its 306th to 308th meetings (CRC/C/SR.306-308), held on 3 and 4 June 1996, and adopted* the following concluding observations:

A. Introduction

2. The Committee expresses its appreciation to the State party for its report and its replies to the Committee's list of questions as well as for the information provided on the most recent measures taken to implement the Convention.

3. The openness of the State party's high-level delegation in acknowledging the problems, difficulties and challenges facing the State party in implementing the principles and provisions of the Convention is highly appreciated. The Committee expresses its appreciation to the State party for engaging in a constructive dialogue and for its willingness to take into account the recommendations made by the Committee.

B. Positive factors

4. The Committee welcomes the steps taken to secure a durable peace within Guatemala, particularly by enhancing the enjoyment of human rights, including

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* At the 314th meeting, held on 7 June 1996.

for the indigenous peoples. In this connection, the Committee notes the adoption of the Agreement on the Identity and Rights of Indigenous Peoples and the Agreement on Socio-Economic Aspects and the Agrarian Situation. The ratification by Guatemala of International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries is also welcomed.

5. Further positive developments as evidenced by the signing of the Comprehensive Agreement on Human Rights, the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, and the establishment of the United Nations Mission in Guatemala (MINUGUA), particularly its human rights component, are noted with interest. Additional measures taken with a view to strengthening the monitoring and implementation of human rights are noted. In this regard, the Committee notes with satisfaction the establishment of the Office of the Human Rights Procurator and its Children's Ombudsman.

6. The establishment of the Presidential Commission for Coordinating Policy in the Field of Human Rights and the work of the Social Committee within the Cabinet of Ministers are also noted with interest, especially as regards the formulation of policies for improving the social and economic development of the most vulnerable groups in Guatemalan society.

C. Factors and difficulties

7. Over 30 years of armed conflict in the country have left a legacy of human rights violations, impunity and a climate of fear and intimidation which hampers the confidence of the population in the ability of procedures and mechanisms to ensure respect for human rights.

8. The decades of conflict affecting society have resulted in the frequent use of violence, including within the family.

9. As recognized by the State party, the root causes of the armed conflict need to be tackled, embedded as they are in socio-economic disparities and uneven land distribution as well as in historical social contrasts within the country. High levels of poverty and illiteracy and discrimination against the indigenous population and those living in poverty contribute to widespread violations of human rights.

10. Problems relating to the situation of refugees, internally displaced and "returnees" have also arisen out of the armed conflict. In this connection, the difficult task of meeting the needs and expectations of the population which remained in or fled from the country during the period of armed conflict is recognized.

D. Principal subjects of concern

11. The inadequacy of measures adopted to allocate priority to the implementation of the principles and provisions of the Convention and the absence of a national policy for children, are matters of concern to the Committee.

12. The Committee is equally concerned about the lack of measures to harmonize national legislation with the principles and provisions of the Convention. It is especially concerned that the Minors Code currently in force in Guatemala contains provisions which are incompatible with the Convention and does not address all the rights recognized by the Convention.

13. The Committee is deeply concerned about the insufficient efforts to collect disaggregated statistical data and to identify appropriate qualitative and quantitative indicators on the situation of children, particularly those belonging to the most disadvantaged groups, including those living and working in the street, victim of abuse, neglect or ill-treatment and internally displaced children.

14. The Committee is of the view that insufficient measures have been adopted to promote widespread awareness of the principles and provisions of the Convention to adults and children alike, particularly to those belonging to indigenous populations, in the light of article 42 of the Convention. The failure to provide sufficient activities to train and educate professionals working with or for children about the Convention is to be regretted.

15. The Committee is concerned about lacunae identified in national legislation. In this connection, the failure to provide for an age for the completion of compulsory education as required by the Constitution of Guatemala as well as by article 2 of ILO Convention No. 138 is a matter of considerable concern to the Committee. Equally, the Committee is deeply concerned that national legislation does not prohibit capital punishment or life imprisonment without the possibility of release, as required by the provisions of article 37 (a) of the Convention. Moreover, the absence in national legislation of a minimum age for criminal responsibility causes deep concern to the Committee. Similarly, the low age of marriage for girls, which is different from the one for boys, is, in the Committee's view, also incompatible with the principles and provisions of the Convention.

16. In view of the historical disparities affecting indigenous children and children belonging to groups living below the poverty line, as well as girls, the Committee is concerned about the adequacy of measures to ensure the effective implementation of the economic, social and cultural rights of children at the national, regional and local levels, in the light of articles 2, 3 and 4 of the Convention.

17. The Committee is concerned at the insufficient support given to families facing severe problems in fulfilling their responsibilities as regards the upbringing of their children. The Committee shares the concern expressed by the representative of the State party at the widespread severe malnutrition and at the inadequacies of data and statistics monitoring nutrition.

18. Particular concern is expressed at the inadequate measures taken to ensure the effective implementation of the general principles of the Convention on the Rights of the Child both in legislation and in practice.

19. Deficiencies in the system of birth registration are of deep concern to the Committee since the failure to register children prevents them from being recognized as persons, from having access to education and health services and from being protected against trafficking in and illegal adoption of children.

20. The Committee is deeply alarmed at the persistence of violence against children, including at the reported information on the 84 children killed. The high number of child victims of violence raises serious concern, particularly in view of the ineffectiveness of investigations into crimes committed against children which paves the way for widespread impunity.

21. The Committee notes with concern the information provided by the State party that an illegal adoption network has been uncovered and that the mechanisms to prevent and combat such violations of children's rights are insufficient and ineffective.

22. Despite the considerable progress achieved in recent years in improving infant and maternal care, the Committee remains concerned about the relatively high maternal, infant and under-five mortality rates. The Committee observes that some factors contributing to high maternal deaths may be related to the inadequacies of the training given to birth attendants and of home deliveries. It is also the view of the Committee that many problems remain with respect to the reproductive health of women, the low birth weight of children being a possible manifestation of this fact.

23. The Committee is seriously concerned that the majority of children of school age are not attending school, but are involved both in the informal and formal work sectors. Moreover, the Committee is disturbed about the inadequacy and ineffectiveness of the measures designed to ensure the establishment of appropriate standards and to monitor the working conditions of children when such activities are compatible with article 32 of the Convention. The Committee is seriously concerned at the persistence of child labour and about the lack of accurate assessment by the Government of the dimensions of the phenomenon in the country.

24. The juvenile justice system in the State party raises serious concern in the Committee, in particular the system of irregular behaviour (conducta irregular). The Committee is further concerned about the lack of specialized training of professionals working in the field of juvenile justice, which hampers efforts to ensure the independence of the judiciary and the capacity of the system to effectively investigate crimes committed against children and undermines measures to eradicate impunity.

E. Suggestions and recommendations

25. The Committee recommends that children's issues be accorded a higher priority in the State party. It is the Committee's view that the development of a global and national policy on children must be attended to urgently. The Committee also recommends that the State party adopt all the necessary measures to ensure that its national legislation fully conforms to the Convention. In this regard, and in recognition of the importance of

ensuring an integrated legal approach to children's rights in the light of the principles and provisions of the Convention, the Committee encourages the State party to pursue its efforts aimed at the adoption of a Code on Children and Adolescents.

26. The Committee recommends that legislative measures be undertaken to ensure that national legislation conforms with the provisions of articles 37 and 40 of the Convention, including establishing a minimum age of criminal responsibility. The Committee also recommends that the State party set the age for completion of compulsory schooling at 15 and consider raising the minimum age of employment to 15. Further, the Committee recommends that the State party review its legislation on the age of marriage for girls in the light of the principles and provisions of the Convention, notably those of its articles 2, 3 and 24, with a view to raising it and ensuring the same age for girls and boys.

27. The Committee encourages the State party to pursue its efforts to strengthen the institutional framework for the promotion and protection of human rights in general and the rights of the child, in particular. The Committee recommends that a permanent and multidisciplinary mechanism be developed for coordinating and implementing the Convention at the national and local levels and in urban and rural areas. The Committee also encourages the promotion of close cooperation with non-governmental organizations in this regard.

28. The Committee further recommends that the State party give priority attention to the development of a system of data collection and to the identification of appropriate disaggregated indicators with a view to addressing all areas of the Convention and all groups of children in society. Such mechanisms can play a vital role in systematically monitoring the status of children and evaluating the progress achieved and the difficulties hampering the realization of children's rights, and can be used as a basis for designing programmes to improve the situation of children, particularly those belonging to the most disadvantaged groups, including girls, children living in rural areas and indigenous children. It is further suggested that the State party request international cooperation in this regard, particularly from the United Nations Children's Fund.

29. In view of the State party's willingness to develop a culture of human rights and to change attitudes towards children in general and the indigenous population in particular, the Committee recommends that information and education about children's rights be disseminated among children and adults alike. It is also recommended that consideration be given to the translation of such information into the main indigenous languages and that appropriate measures be adopted to spread such information in such a way that it reaches groups affected by a high level of illiteracy. In the light of the considerable experience of the United Nations Children's Fund and other organizations in responding to such challenges, it is recommended that international cooperation be sought in this regard.

30. It is the view of the Committee that training and education in the principles and provisions of the Convention on the Rights of the Child is

urgently required and must encompass all professionals working with or for children. In addition, the Committee recommends that the inclusion of children's rights in the school curricula be pursued as a measure to enhance respect for the indigenous culture and multiculturalism and to combat paternalistic and discriminatory attitudes which, as recognized by the State party, continue to prevail in society.

31. With respect to article 4 of the Convention, it is the Committee's opinion that sufficient budgetary provision must be made to respond to national and local priorities for the protection and promotion of children's rights. While noting the trend towards decentralizing the provision of services to the municipal level as a means of promoting greater popular participation, the Committee emphasizes that such a policy must be designed to overcome and remedy existing disparities between the regions and rural/urban areas. To ensure the full implementation of article 4, the Committee recommends that consideration be given to the provision of international assistance within the general framework of the Convention.

32. The Committee recommends that urgent measures be taken to ensure effective consideration of the general principles of the Convention, namely its articles 2, 3, 6 and 12, in the national process of implementing the Convention.

33. The Committee recommends that a comprehensive public information campaign be developed and implemented urgently to combat the abuse of children in the family and within society as well as the use of corporal punishment in schools.

34. The Committee recommends that the State party introduce the measures necessary to monitor and supervise effectively the system of adoption of children in the light of article 21 of the Convention. It is also recommended that adequate training be provided to concerned professionals. In addition, it is recommended that the Government consider ratifying the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

35. The Committee encourages the State party to strengthen its support to families in carrying out their child-rearing responsibilities, such as by providing nutritious food and conducting vaccination programmes. As a means of addressing the problems of maternal death and poor antenatal care and delivery services, the Committee suggests that the State party consider introducing a more effective system training medical personnel and birth attendants. The Committee also recommends that the State party consider requesting international cooperation from relevant international organizations to address issues relating to the reproductive health of women.

36. The Committee encourages the State party to implement the "Food for Education Programme" as an incentive for children to attend school. It also recommends that a comprehensive nutritional programme be developed, taking into particular account the special needs of children.

37. The Committee encourages the State party to pursue its efforts, in conformity with the Agreement on Socio-Economic Aspects and the Agrarian Situation, to increase the budgetary allocations for education by 50 per cent

up to the year 2000. With a view to ensuring the implementation of articles 28 and 29 of the Convention, the Committee recommends that the State party focus greater efforts on providing for compulsory and free primary education, eradicating illiteracy and ensuring the availability of bilingual education for indigenous children. Moreover, greater efforts should be made in training qualified teachers. Such measures will contribute to the prevention of any form of discrimination on the basis of language with regard to the right to education.

38. The Committee recommends that provision be made for offering social assistance to families to help them with their child-rearing responsibilities as laid down in article 18 of the Convention as a means of reducing institutionalization of children. Further efforts are also required to ensure the active participation of disabled children in the community in conditions which ensure their dignity and promote their self-reliance, as well as to ensure that disabled children are separated from adults suffering from mental ill-health. The Committee recommends that measures be taken to review periodically the placement and treatment of children as required under article 25 of the Convention.

39. The problems of children traumatized by the effects of armed conflict and violence in society are, in the Committee's view, a matter of serious concern. In this connection, the Committee recommends that the State party give consideration to the implementation of specific projects for children, to be carried out in an environment which fosters the health, self-respect and dignity of the child.

40. In view of the fact that the Constitution of Guatemala recognizes the predominance of duly ratified international conventions in the field of human rights, the Committee urges the State party to apply the principles and provisions of the Convention in the area of juvenile justice, rather than the provisions of the national legislation which are in contradiction with the Convention, in particular those relating to the system of "irregular behaviour". The Committee further recommends that the juvenile justice system be revised to ensure that it is compatible with the principles and provisions of the Convention, including its articles 37, 39 and 40, as well as other relevant international instruments in the field. In this connection, it is recommended that the State party consider requesting technical assistance from international organizations, including the United Nations Centre for Human Rights.

41. As a means of tackling the interrelated issues of education and child labour, the Committee recommends that all necessary measures be adopted to ensure that children have access to education and that they are protected from involvement in exploitative activities. The Committee further recommends that effective public awareness campaigns be launched for the prevention and elimination of child labour in the light of article 32 of the Convention. In this regard, the Committee recommends that the State party seek technical assistance from the International Labour Organization.

42. The Committee recommends that the State party consider developing an agenda for priority action to ensure an integrated approach to the

implementation of human rights in Guatemala in the light of the suggestions and recommendations addressed to the State, particularly in the area of children's rights.

43. Finally, the Committee recommends that the State party's report, the summary records of the examination of the report in the Committee and the Committee's concluding observations be given wide dissemination in Guatemala. The Committee suggests that these documents be brought to the attention of the Congress as a means of ensuring follow-up to the suggestions and recommendations made by the Committee.